Consumer Protection Against Standard Clauses in Business Transactions Through E-Commerce

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Abstract

Standard agreements or standard agreements aim to provide convenience or practicality for the parties in conducting transactions, especially in the business sector. Problems will arise when consumers in electronic business transactions face standard agreement formulas in which many standard clauses require consumers to agree. In practice, currently, no e-commerce platform does not use standard agreement formats and clauses in transactions with consumers. This form of the agreement positions the consumer as a party that has no bargaining power, so whatever the contents of the standard agreement are, inevitably must be agreed upon, even though basically the consumer knows that the contents of the agreement are burdensome to him. The problem under study is how is the legal protection of consumers involved in standard agreements with the exoneration clause in a business transaction through electronic media (e-commerce). The research method used is a normative legal research method with a statute approach, a conceptual approach, and the views of experts related to the problem. The results of the study show that standard contracts containing exoneration clauses have legal consequences for consumers, namely the responsibility that should be borne by business actors becomes the responsibility of consumers. The Consumer Protection Law requires business actors to immediately adjust the standard contracts used with the provisions of the law, but in practice, this is difficult to do.

I. Introduction

Agreement law adheres to a principle called the principle of freedom of contract or termed *contractvrijheid* or *partijautonomie*.[1] The principle of freedom of contract is universal and refers to the free will of everyone to make a contract or not to make a contract, the restrictions are only for the public interest and in the contract, there must be a reasonable balance. Based on the goals to be achieved by the parties, as well as the need for rules that can accommodate interests and provide legal protection for economic actors (the parties), then in the development of contract law, has an impact on new forms of contract law that want to be effective, simple, practical, and does not require a long process and time is possible in the principle of freedom of contract.[2]

Agreement law provides space for the parties to form and determine the contents of the agreement to be carried out, however, in its implementation, several problems are often experienced in carrying out the agreement, one of which is the existence of a standard contract, in Law Number 8 of 1999 regarding Consumer Protection. Article 1 Number 10 of the Law states that: "Standard Clauses are any rules or conditions and conditions that have been prepared and determined in advance unilaterally by business actors as outlined in a document and/or agreement that is binding and must be fulfilled. by consumers"

In practice, the principle of freedom of contract is not applied in making a standard agreement but considering that a standard contract has become a necessity for the community and business actors. The principle of freedom of contract implies that the parties have the freedom to make an agreement/contract.[3] The existence of restrictions on the principle of freedom of contract coming from the state began its development around the 20th century. Restrictions on the principle of freedom of contract have been known and recognized by contract law. Restrictions that have just emerged that were previously unknown by contract law, namely restrictions that come from the court in the context of carrying out its function as a lawmaker, from the legislature maker, especially from governmental parties, and from the introduction and enforcement of adhesion agreements or default agreements

[1] Achmad Busro, 2011, Hukum Perikatan Berdasar Buku III KUH Perdata, Yogyakarta: Pohon Cahaya, p. 1.
[2] Achmad Busro, 2013, Kapita Selekta Hukum Perjanjian, Yogyakarta: Pohon Cahaya, p. 2.
[3] Mariam Darus Badrulzaman, 2015, Hukum Perikatan Dalam KUH Perdata Buku Ketiga, Bandung: PT. Citra Aditya Bakti, p. 84.

arising from business needs. The implementation of restrictions on the application of "execution clauses" (exemption clauses) in standard agreements (standard from the contract), namely partly by court decisions and partly by statutory provisions.[4]

Standard contracts have been known since ancient Greece. According to a report in Harvard Law Review in 1971 that 99 percent of agreements made in the United States are in the form of Standard Contracts. In practice, it is often found that to bind a particular agreement, one of the parties has prepared a draft that will apply to the parties. The concept is structured in such a way that at the time of signing the agreement, the parties only need to fill in several things that are subjective in nature such as; identity and date of making the agreement which was deliberately left blank beforehand. Meanwhile, the provisions regarding the agreement (terms of conditions) have been written (printed) in full and basically cannot be changed anymore. The concept of an agreement like this is called a standard contract (standard agreement/standard agreement).[5]

The growth and development of standard agreements in society are in the context of efficiency, both in terms of time and cost, because the business transactions for which standard agreements will be made are carried out repeatedly and continuously. In the standard agreement, there is an additional clause called the exoneration clause. The exoneration clause is a clause included in an agreement, in which one party avoids fulfilling its obligation to pay full or limited compensation, which occurs due to broken promises or unlawful acts.[6] The standard contract is more efficiently used in the business world. And the practice is easier and simpler and can be immediately signed by the parties. In addition, the standard contract is not a legal issue because considering that the standard contract has become a necessity in business practice. Even so, actually in making a standard agreement/standard contract, if seen, it does not contain any elements of the principle of freedom of contract, but because of the limitations of the principle of freedom of contract, the standard agreement can apply.

Standard clauses in practice are very common in all commercial transactions, including electronic transactions that are made in a standardized form so that it does not rule out the possibility of losses arising from a breach of the contract. Business actors selling their goods or services online often include a standard

[4] Sutan Remy Sjahdeini, 1993, Kebebasan Berkontrak Dan Perlindungan Yang Seimbang Bagi Para Pihak Dalam Perjanjian Kredit Bank Di Indonesia, Jakarta: Institut Bankir Indonesian, p. 58.
[5] Annurdi. "Penerapan Fiksi Hukum (Fictie Van Wil En Vertrouwen) dalam Kontrak Baku." Jurnal Hukum Media Bhakti 1, no. 2 2017, p. 157-163.
[6] Zulham, 2013, Hukum Perlindungan Konsumen, Jakarta: Kencana Prenada Media Group, p. 67.

contract, so power arises asymmetrical bargaining power. This fact closes the possibility for consumers to negotiate with business actors so that if something undesirable happens, consumers are resigned to accepting the losses they suffer.[7] It is estimated solely to save time and money (for economic reasons) to avoid protracted negotiations. It was realized that to reach an agreement on the contents of the agreement, negotiations would take quite a long time. Avoid protracted negotiations so that they do not take too long and cost more. One of the parties, usually the principal party in the form of a corporation, has a legal consultant whose job is to compile the terms of the agreement (terms of conditions). In a standardized contract, the consultant concerned tries in such a way as to secure and protect the interests of his client from possible losses arising from the agreement.[8]

Based on the description of the background above, the problems studied in this study are how the legal protection of consumers involved in standard agreements with the exoneration clause in a business transaction through electronic media (e-commerce)

II. Research Method

The Methodology is one of the methods used by researchers to conduct research. One of the objectives of conducting research is to find discoveries and information obtained through existing research procedures, so that valid research data can be produced and can be accounted for both from a scientific point of view, as well as theoretically. Theoretically, a method is a guideline or a way for a scientist to study and understand the steps faced.[9] This type of research uses a normative type of legal research, namely an approach through the perspective of existing norms, or in other words, is research in the form of an inventory of applicable laws, which seeks to find the principles or philosophical basis of legislation, or research in the form of legal discovery efforts under a particular case. Normative legal research uses normative legal case studies in the form of legal behavior products, for example reviewing laws. The main subject of the study is the law which is conceptualized as a norm or rule that applies in society and becomes a reference for everyone's behavior. So that normative legal

[7] M. Roesli, et-al, "Kedudukan Perjanjian Baku Dalam Kaitannya Dengan Asas Kebebasan Berkontrak" DiH: Jurnal Ilmu Hukum Volume 15 Nomor 1 Februari 2019 – Juli 2019 , p. 2
[8] Ilham Abbas, et-al, "Corporate Responsibility Towards Employees Welfare". Jurnal Yuridika 34, no.1 (2019), p. 36-52.
[9] Soejono Soekanto, 2007, Penelitian Hukum Normatif Suatu Tinjauan Singkat, Jakarta: Raja Grafindo Persada, p. 6

research focuses on the inventory of positive law, principles, and legal doctrine at the level of legal synchronization, comparative law, and legal history.[10]

III. Results and Discussion

The position of standard clauses in contract law in Indonesia can be traced from the legal basis governing these standard clauses, as well as the use of standard clauses in civil relations by the parties. Regarding the position of the standard clause, it can be seen from the legal regulations that govern it as well as several examples of agreements that use standard clauses. An agreement as stated in article 1313 of the Indonesian Civil Code (KUHPer) is an act by which one or more people bind themselves to one or more other people. It is different from the standard agreement which is a written contract made only by one of the parties, often the contract has already been printed in the form of certain forms, in which case when the contract is signed, the parties generally only fill in certain information data. only with little or no change in the clauses, where the other party to the contract has no opportunity or only a little opportunity to negotiate or change the clauses that have been made by one of the parties. Sjahdeni emphasized that what was standardized in this agreement was not the form of the agreement, but the clauses.[11]

The standard agreement is made by a party whose economy is strong against a debtor whose economic position is weak. From the type of standard agreement that has been stated previously, the parties differ. For example, in a standard agreement in the field of insurance, the parties are the guarantor and the insured. The guarantor is the party that has prepared the substance of the standard agreement. Meanwhile, the insured just needs to sign the agreement. The party that plays a very important role in determining the standard agreement is the party with a strong economy and it is this party that compiles the clauses. Freedom of contract or freedom of contract must be restricted from working so that contracts made based on this principle do not become one-sided or unequal agreements. There are several limitations imposed by the articles of the Civil Code on this principle, which make this principle an unlimited principle, including

Article 1320 paragraph (1); paragraph (2); and paragraph (4), Article 1332, Article 1337, and Article 1338 paragraph (3). Article 1320 paragraph (1) provides instructions that contract law is governed by the "consensual principle" and is

[10] Abdulkadir Muhamad, 2004, Hukum dan Penelitian Hukum Cet. 1, Bandung: PT. Citra Aditya Bakti, p. 52.
[11] Sutan Remy Sjahdeini, 1993, Kebebasan Berkontrak dan Perlindungan yang Seimbang Bagi Para Pihak dalam Perjanjian Kredit Bank di Indonesia, Jakarta: Institut Bankir Indonesia, p. 66.

limited by this principle. This article also implies that the freedom of a party to determine the contents of the contract is limited by the agreement of the other party. From Article 1320 paragraph (2) it can be concluded that the freedom of people to make agreements is limited by their ability to make contracts. For someone who according to the provisions of the law is not capable of making a contract, he does not have the freedom to make a contract at all. Article 1320 paragraph (4) jo 1337 stipulates that the parties are not free to enter into contracts involving causes prohibited by law or contrary to decency or public order are invalid.

The legal framework for implementing consumer protection in Indonesia is regulated in Law Number 8 of 1999 concerning Consumer Protection. Legal protection for consumers is legal certainty for the protection of the fulfillment of consumer rights.[12] Legal certainty referred to in this sense includes all efforts to empower consumers to obtain or determine their choice of goods or services they need and to defend or defend their rights if they are harmed by the behavior of business actors providing consumer needs.[13] Legal protection for consumers is based on the existence of several consumer rights that need to be protected from actions that can harm consumers. These rights are rights that are fundamental and universal in nature so they need to receive guarantees from the state for their fulfillment. The definition of a consumer in general is a user, user, and/or beneficiary of goods and/or services for oneself, or others and not traded.[14] However, in social reality, between consumers and business actors or producers, there is often a correlation and causal relationship involving the rights and obligations of each party. Between business actors or producers with consumers or customers, there can be a relationship of mutual need.[15] Producers or business actors will try to seek the highest profit in accordance with the economic principle adopted, namely "the principle of seeking the highest profit through the smallest sacrifice." In order to achieve the highest profit, producers/business actors must compete with each other with their own business behavior which can be detrimental to consumers. Intense competition can change behavior towards unhealthy competition in order to protect the interests of each which conflict with each other.[16] The need for efficiency in every business activity influences the

[12] Susilowati Suparto, et-al., "Harmonisasi Dan Sinkronisasi Pengaturan Kelembagaan Sertifikasi Halal Terkait Perlindungan Konsumen Muslim Indonesia." Mimbar Hukum-Fakultas Hukum Universitas Gadjah Mada 28, no. 3 (2016): 427-438.
[13] Hanum Rahmaniar Helmi. "Eksistensi Badan Penyelesaian Sengketa Konsumen Dalam Memutus Sengketa Konsumen Di Indonesia." Jurnal Hukum Acara Perdata ADHAPER 1, no. 1 (2015), p. 77-89.
[14] Abdul Halim Barkatullah, 2010, Hak-Hak Konsumen, Bandung: Nusa Media, p. 8.
[15] Artidjo Alkostar. "Fenomena-fenomena Paradigmatik Dunia Pengadilan di Indonesia (Telaah Kritis terhadap Putusan Sengketa Konsumen." Jurnal Hukum Ius Quia Iustum 26, no. 11 (2014), p. 1-14.
[16] Dedi Harianto. "Asas Kebebasan Berkontrak: Problematika Penerapannya Dalam Kontrak Baku Antara Konsumen Dengan Pelaku Usaha." Jurnal Hukum Samudra Keadilan 11, no. 2 (2016), p. 145-156.

development of the use of agreements. For almost every activity that is directly related to many people, the company always uses an agreement that has been made unilaterally by the company, this agreement is commonly referred to as a standard agreement.[17]

n the provisions of Article 18 paragraph (1) UUPK stipulates that business actors in offering goods or services intended for trading are prohibited from making or including standard clauses in every document and or agreement where the clause will result in:

1) Transfer of responsibilities of business actors;
2) State that business actors have the right to refuse the return of goods purchased by consumers;
3) State that the business actor has the right to refuse to return the money paid for goods or services purchased by consumers;
4) Declare the authorization from consumers to business actors, either directly or indirectly, to take all unilateral actions related to goods purchased by consumers in installments;
5) Regulates the disclosure regarding the loss of use of goods or services purchased by consumers;
6) Give rights to business actors to reduce service benefits or reduce consumer assets that are the object of buying and selling services;
7) Declares consumer compliance with regulations in the form of new rules, additions, continuations and/or further changes made unilaterally by business actors while consumers are using the services they have purchased;
8) Declare that the consumer authorizes the business actor to impose mortgage rights, lien rights or security rights on goods purchased by consumers in installments.

Furthermore, Article 18 paragraph (2) of the PK Law stipulates that business actors are prohibited from including standard clauses whose location or shape are difficult to see or cannot be read clearly or whose disclosure is difficult to understand. As a consequence of violations of the provisions of Article 18 paragraphs (1) and (2) referred to in Article 18 paragraph (3) of the PK Law it is declared 'null and void' for every standard clause that has been determined by business actors in documents or agreements containing prohibited provisions. Article 18 paragraph (1) and Article 18 paragraph (2).

According to Law Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE), electronic information and/or electronic documents, and/or their printouts are only legally considered as evidence, if they are

[17] Abdul Karim Munthe. "Penggunaan Perjanjian Buku dalam Transaksi Bisnis Menurut Hukum Islam." AHKAM: Jurnal Ilmu Syariah 15, no. 2 (2015), p. 211-220.

generated from an electronic system. Agreements in electronic transactions are in the form of standard contracts, these conditions are based on the existence of an "open system legal concept" stipulated in Article 1338 paragraph (1) of the Civil Code or better known as the principle of freedom of contract, in which the article states that "all agreements lawfully made shall apply as a law for those who make it". This principle implies that people have the freedom to make agreements according to their wishes or interests. The freedom in question includes:

a. The freedom of each person to decide whether he will make an agreement or not make an agreement.
b. Everyone's freedom to choose with whom to make an agreement.
c. The freedom of the parties to determine the form of the agreement.
d. The freedom of the parties to determine the contents of the agreement.
e. The freedom of the parties to determine how to make the agreement.[18]

Furthermore, all e-commerce transactions that meet the legal requirements of an agreement, namely Article 1320 of the Civil Code, are recognized as agreements and are binding on the parties. The importance of Article 1320 of the Civil Code is because that article regulates the legal requirements for an agreement, namely: (1) there is an agreement; (2) skills; (3) there is a certain object and (4) there is a lawful cause. There are two kinds of these conditions, namely the first regarding the subject (who made the agreement) and the second regarding the object, namely what is promised by each, which is the contents of the agreement or what is intended by the parties by making the agreement.

Various consumer protection efforts for the enforcement of standard contracts are contained in the application of various protection principles, starting from the principle of the agreement, the principle of the position of consumers with business actors, and the principle of responsibility which is directed at creating a legal certainty that is holistic protection, namely protection from upstream to downstream. Upstream means legality in the pre-contract and contractual stages, such as regarding agreements and determining the substance of contracts according to statutory provisions, while downstream is the stage of contract implementation (post-contract) which is implemented in the form of consequences of accountability for the application of contract standards.[19] However, if a standard contract places conditions that are unbalanced (potentially detrimental), then overcoming this can be done by holding several

[18] Sukarmi, 2005, "Tanggung Jawab Pelaku Usaha Atas Kerugian Konsumen Yang Disebabkan Oleh Perjanjian Baku (Standard Contract) Dalam Transaksi Elektronik", Bandung: Disertasi Fakultas Hukum Universitas Padjajaran, p. 241.

[19] Nurul Qamar dan Hardianto Djanggih. "Peranan Bahasa Hukum dalam Perumusan Norma Perundang-undangan." Jurnal Ilmiah Kebijakan Hukum 11, no. 3 (2017), p. 337-347.

recovery efforts (restitutive), namely:[20] Re-negotiation is a stage that precedes the adjustment of the agreement intended to restore balance. The values of decency and appropriateness will play an important role in the process of new contents of the agreement of the parties who experience an unexpected situation (over macht). Re-negotiation to improve the agreement can be done through reconciliation (sticking), mediation, or the intervention of a judge; Adjustment: by reducing performance equally between actors and consumers, and the agreement is canceled in part, then this is called an adjustment to the agreement, and if a standard contract is very detrimental to consumers, the right choice is cancellation of the agreement (termination), normatively it can be categorized into the form is canceled or null and void, this is in accordance with Article 1320 and Article 1337 of the Civil Code, an agreement formed due to an element of defective will or inability to act will result in the consequence being cancelled. Being null and void leads to a form of action that violates the law, decency and decency. Against this situation, compensation will appear as a civil pattern as an instrument to restore the legal relations of the parties that have been disrupted previously.

Contract justice can be seen in an agreement when both parties reach an agreement to mutually bind themselves without any pressure from the other party, in this case the contract is made voluntarily.

a. Bargaining Position of the Parties
   In this case, an example can be taken from a credit agreement at a bank, where the customer's position when they want to apply for a loan must follow the rules made by the bank, without room for negotiation, whether it is related to interest, payment systems or terms. other provisions. This bargaining position is also related to the ability of the parties in this case related to the economic situation they have. The bargaining position of the parties in an agreement cannot be separated from the consumer's position, so that it can be seen clearly how the consumer's position in the agreement is one of the elements that cannot be abandoned.
b. There are negotiations
   Negotiation is an important matter in an agreement, by negotiating, both parties can know the rights and obligations that will be carried out. Negotiation in an agreement arises because the parties have their own goals to aim at, so that with these negotiations it is hoped that an agreement will be reached. The principle of a win-win solution is the basic principle that is aimed at these negotiations, in a standard agreement that has been made by one of the parties, the room for negotiating is very small,

[20] Herlien Budiono, 2006, Asas Keseimbangan bagi Hukum Perjanjian Indonesia Hukum Perjanjian Berlandaskan Asas-Asas Wigati Indonesia, Bandung: Citra Aditya Bakti, p. 487.

this can be seen by the availability of clauses previously provided by one of the parties. one party (manufacturer), so that the other party only approves or does not. This is to ensure the creation of a genuine agreement from the parties, at least to reach an agreement there are three elements that cannot be separated, namely:

1) Supply and demand (aanbod enaanvaarding),
2) The teachings of the will and the teachings of the statement,
3) The principle of trust.

The principle of negotiation itself is contained in the supply and demand (aanbod enaanvaarding), in the offer and request the parties can exchange thoughts and wishes for a particular purpose. In addition, negotiations carried out in an agreement can also avoid contracts that are one-sided, of course this is very contrary to the principle of proportionality and the principle of balance, where in these two principles it is clearly stated that a balance for the parties is the first step to creating contractual justice.

c. Honesty in Transactions (Fair)
The relationship between business actors and consumers is honest, in this case, the business actors do not take actions that are prohibited by law. In Article 17 paragraph (1) of Law no. 8 of 1999. In connection with the imposition of sanctions, it is hoped that the relationship between the parties in the agreement will be able to run well. In addition, when the parties understand each other the legal relationship that occurs in an agreement, then it will be easy for the parties to behave in order to achieve the intended desire without any party being harmed.

d. Proportionality in Agreement Clauses
The proportionality of an agreement can be seen from the exchange of interests that exist from each party, in this case, whether the debtor or the creditor is in the agreement. Therefore, the proportionality in an agreement can be seen in the contents of the clauses in the agreement. Proportionality here relates to the exchange of rights and obligations between parties, can it work well, or is there a clause that actually burdens one of the parties? The existence of openness in the agreement can help in creating a level of proportionality to the agreement. Disclosure of information related to clauses in the agreement is at least in accordance with what is the purpose of forming a protection law
the consumer.

e. There is a Balance in the Agreement
The balance in the contract can be reviewed on the conditions of the parties before entering into the contract. There are at least three aspects in an agreement that needs to be considered in order to achieve this balance, namely:

First, the Actions of the Parties, in this case, are related to the subject of the agreement, it is undeniable that an agreement can be realized when the parties bind themselves to the agreement. Legal actions carried out by the parties can be seen from the statement of the will oneself to do or not to take legal actions. When the conditions and circumstances of the parties are in balanced condition, they will be able to make a good agreement, and vice versa when the legal action taken comes from the imperfect self of one or both parties, then the agreement can be said to be in an unbalanced state.

Second, the contents of the contract. The balance in the contents of the contract is inseparable from the awareness and agreement of the parties to make the contract. It is undeniable that the contents of the contract made cannot be separated from the principle of freedom of contract, this is because the existing legal regulations do not regulate the type, content, and clauses in the contract.

Third, the implementation of the contract is an activity carried out by the parties as an application of the clauses made in the agreement, the implementation of this contract is the responsibility of the parties, therefore the parties are expected to carry out the contract in good faith. well, so as to provide benefits for both parties who promise.

IV. Conclusion

Based on what has been described regarding the discussion of the problems above, it can be concluded that the open legal system in Article 1338 paragraph (1) of the Civil Code, hereinafter referred to as the principle of freedom of contract, has provided a legal basis to provide the position of both parties in an equal position in the agreement. standards in electronic transactions.

Consumer rights are harmed as a result of standard agreements made by business actors, namely the right to have their opinions and complaints heard about the goods and/or services used and the right to be treated or served properly and honestly and not discriminatory and legal protection of consumer rights upon the making of a standard agreement by business actors, the consumer party receives legal protection by law based on Article 45 paragraph (1) of Law Number 8 of 1999 concerning Consumer Protection. Standard agreements containing exoneration clauses have legal consequences for consumers, namely the responsibility that should be borne by business actors becomes the responsibility of consumers. Legal remedies that can be taken by consumers for the inclusion of exoneration clauses by business actors include non-litigation and litigation.

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